Country Watch Lists as Global Norm-Setting Instruments on Copyright Flexibilities

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The normative foundations for copyright protection

- Copyright originally recognised as a monopoly right
  - Derives from press regulation, not property law
  - Normative basis in utilitarianism not natural rights

- More recent shift to thinking of copyright as property
  - *Intellectual property* popularised by WIPO in 1967
  - Knowledge sharing described as *piracy* and *theft*
Implications of the Access to Knowledge movement

- WIPO Development Agenda invites a further shift
  - Neither *monopoly* nor *property* but *human rights*
  - Advocacy for a treaty on Access to Knowledge
- Introduction of new protections of rights holders to be counterbalanced with new copyright flexibilities
Mechanisms for influencing copyright norms towards property

- Media campaigns and funded research
  - “You wouldn't steal a car”
  - Associating sharing with piracy, theft and terrorism
- Technical measures
- Multilateral policy fora and unilateral norm-setting
  - ACTA negotiations
  - USTR Special 301 Report
About the USTR 301 Report

- Mandated under s.182 of the Trade Act of 1974
- Issued by the United States Trade Representative
- Public input invited by 17 February 2009
- Government input invited by 2 March 2009
- Previous reports based strongly on input of PhRMA and International Intellectual Property Alliance
- Released around 30 April each year
Objectives of the USTR 301 Report

- Claims “to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection”
- Includes a Priority Watch List of egregious offenders
- Imposes TRIPS-plus expectations
  - eg. criticises compulsory licensing of drug patents
Mechanisms for influencing copyright norms towards A2K

- Media campaigns and funded research
  - WBU's *Right to Read* global campaign
  - CI research on impact of new copyright flexibilities
- Substitution of shrinking *public domain* commons with Creative Commons and FOSS
- Consumers International IP Watch List
Why an IP Watch List for Consumers?

- As an advocacy tool
  - To help drive a shift in copyright normativity
- As a counterpart to the USTR 301 Report
  - To balance its global normative impact
- To disseminate global best practices
  - To eventually feed into an international instrument
Conclusion

- The normative foundations of copyright in transition
- Rights-holders and captured governments challenged
- Watch lists can influence global copyright norms
  - USTR Special 301 Report towards TRIPS-plus
  - CI's IP Watch List towards Access to Knowledge
Contacts and references

- USTR Special 301 Report
  - http://www.ustr.gov/
- Consumers International IP Watch List
  - http://A2Knetwork.org/watchlist
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